

BOUCHER LLP

March 7, 2018

Via Online Submission

Regional Freedom of Information Officer
U.S. EPA, Region IX (OPA-2)
75 Hawthorne Street
San Francisco, CA 94105
Website: <https://foiaonline.regulations.gov>

Re: Freedom of Information Act Request

To Whom it May Concern:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.* Please provide copies of:

1. All documents (including but not limited to any reports, correspondence, emails, studies, test results and/or analyses, research, samplings, assessments, determinations and/or recommendations), that the Environmental Protection Agency (EPA) reviewed and/or relied upon to prepare the EPA's report entitled Lead and Copper Rule Review of the City of Fresno's Public Water System (the "EPA Report"), and/or the assessments or recommendations in the EPA Report.
2. All notes of discussions, whether in person or otherwise, held between the EPA (Region IX), and the California State Water Resources Control Board ("State") and/or the City of Fresno, California ("City"), relating to or concerning the City's Public Water System. *See, e.g.*, January 19, 2017 Letter by Tomas Torres, Director of Water Division, EPA Region IX, to Tom Howard, Executive Director of State Water Resources Control Board enclosing the EPA Report (the "January 19, 2017 Letter").
3. All notes of discussions, whether in person or otherwise, held between the EPA (Region IX), and the California State Water Resources Control Board ("State") and/or the City of Fresno, California ("City") from the August 24, 2016 meeting with the EPA, former Deputy Director Cindy Forbes and other staff members from the State's Division of Drinking Water, and former City of Fresno Mayor Ashley Swearingin. *See, e.g.*, January 19, 2017 Letter.
4. All documents received or relied upon by the EPA as part of its actions taken after January 19, 2017 to "monitor the City's response to elevated lead levels in tap samples" (as stated in the January 19, 2017 Letter), including but not limited to any documents provided by the City or State in response to the EPA's recommendations in Section IV of the EPA Report.
5. The Action Plan by the City of Fresno that is described in Section II.B of the EPA Report. *See* EPA Report, p. 2.

6. The lead education and outreach materials that the State provided to the EPA. *See* EPA Report, p 2.

7. The report(s) by the City's retained expert, Dr. Marc Edwards provided to the EPA's Office of Research and Development, and any additional documentation, correspondence, or materials provided by Dr. Edwards, either directly or through the City, to the EPA. EPA Report, p. 2.

8. The report(s) by the City's retained expert, Dr. Vernon Snoeyink provided to the EPA's Office of Research and Development, and any additional documentation, correspondence, or materials provided by Dr. Edwards, either directly or through the City, to the EPA. EPA Report, p. 2.

9. All documents or materials provided by the State that the EPA states it based its assessment of the City's compliance with the LCR requirements upon, including the following described documents or materials described in the EPA Report at pages two to three:

a. 1992 Final Compliance Order for failure to conduct required monitoring under the Lead and Copper Rule beginning January 1992 issued by EPA;

b. 1993 Materials evaluation report completed and submitted by the City to EPA;

c. 1994 Corrosion Control Study completed and submitted by the City to EPA;

d. 1998 Corrosion Control Study completed and submitted by the City to the State;

e. LCR Tap Monitoring reports for 1993, 1994, 1996, 1999, 2003, 2006, 2009, 2012, and 2015 completed and submitted by the City;

f. June 2005 PWS permit amendment issued by the State;

g. 2004 NESWTP operation plan updated in 2011 issued by the City of Fresno;

h. Correspondence between the City and the State.

10. The sampling data taken by the City for 706 homes from January to September 10, 2016, provided by the State to the EPA. EPA Report at p. 2, fn. 4.

11. All documents that the EPA received, reviewed, referred to, referenced, considered, prepared, and/or relied upon in preparation of its assessment that the sampling sites selected by the City “may no longer be sufficiently robust to meet the targeted sampling site requirements of the LCR or represent the highest susceptibility to lead and copper leaching”. EPA Report, p. 4.

12. All documents that the EPA received, reviewed, referred to, referenced, considered, prepared, and/or relied upon in preparation of the following assessment: “The City identified sufficient Tier 1 sampling sites for lead and copper tap samples, however, the sample site selections have not been updated since 1993 and may not adequately represent the portion of the service area served by the NESWTP”. EPA Report, p. 5.

13. All documents that the EPA received, reviewed, referred to, referenced, considered, prepared, and/or relied upon in preparation of the following assessment: “The City is in compliance with the AL for lead 1993-2015”. EPA Report, p. 5.

14. The State’s letter dated March 4, 1996 cited by the EPA in its report, in which “the State determined that the City’s corrosion control was optimized.” EPA Report at page 6 (the same letter is also referenced on page 7).

15. The following document described by the EPA in its report at page 6, footnote 15: “The City’s July 1993 Technical Memorandum containing the results of the 1993 sampling identifies the highest reported source water lead concentration as between 0.001 mg/L and 0.049 mg/L, and the laboratory identified the midpoint as the reported value (0.0025 mg/L).”

16. All documents that the EPA received, reviewed, referred to, referenced, considered, prepared, and/or relied upon in preparation of the following assessment: “The State’s determination that the City was operating under optimized corrosion control in 1996 was inconsistent with the criteria set forth at 40 C.F.R. § 141.81 (b)(3).” EPA Report, p. 5.

17. All documents that the EPA received, reviewed, referred to, referenced, considered, prepared, and/or relied upon in preparation of the following assessment: “The City’s sampling results since 1993 demonstrate that the 90th percentile values for lead have consistently been below 0.005 mg/L, which is the benchmark standard for an ongoing determination for optimized corrosion control.” EPA Report, p. 6.

18. “The City’s April 1993 Lead and Copper Sampling Plan” described by the EPA in the EPA Report at page 7.

19. All documents that the EPA received, reviewed, referred to, referenced, considered, prepared, and/or relied upon in preparation of the following assessment: “The City did not collect initial WQP samples in 1993 at all entry points into the distribution system pursuant to 40 C.F.R. §§ 141.87(a) and (b)(2).” EPA Report at page 7.

20. All documents that the EPA received, reviewed, referred to, referenced, considered, prepared, and/or relied upon in preparation of the following assessment: "The City's initial distribution system WQP monitoring in 1993 was not representative of water quality throughout the distribution system pursuant to 40 C.F.R. § 141.87(a)(1)." EPA Report, p. 7.

21. All documents that the EPA received, reviewed, referred to, referenced, considered, prepared, and/or relied upon in preparation of the following assessment: "In 2004 (when the NESWTP came online), the State should have designated WQPS and required ongoing WQP monitoring because the plant was actively treating to control corrosion." EPA Report, p. 7.

22. All documents that the EPA received, reviewed, referred to, referenced, considered, prepared, and/or relied upon in preparation of the following assessment: "The City did not properly follow the required monitoring schedule for the years 1992, 1995, and 2002." EPA Report at p. 8.

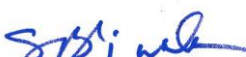
23. All documents that the EPA received, reviewed, referred to, referenced, considered, prepared, and/or relied upon in preparation of the following assessment: "The City did not collect the minimum number of samples in 2003, as required by the LCR regulations." EPA Report, p. 8.

If you have any questions regarding this request, please contact me at (818) 340-5400. I look forward to receiving your response within the twenty day statutory time period. Thank you for your consideration of this request.

Very truly yours,

BOUCHER LLP

By:


Shehnaz M. Bhujwala, Esq.

Attachment/Enclosure:

(1) January 19, 2017 Letter by Tomas Torres, Director of Water Division to Tom Howard, Executive Director of State Water Resources Control Board enclosing Lead and Copper Rule Review of the City of Fresno's Public Water System.